IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

CRL.A.No. 868 of 2006(C)

SC.889/2004 of I ADDL. SESSIONS COURT, KOLLAM
CP.276/2003 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA

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APPELLANT: ACCUSED

GANGADHARAN ACHARY,
S/O. KRISHNAN KUTTY, C.NO.331,
CENTRAL PRISON, POOJAPPURA,
THIRUVANANTHAPURAM-695 012.

BY ADV. ADV.REENA ABRAHAM (STATE BRIEF)

RESPONDENT: COMPLAINANT

THE STATE OF KERALA,
REP. BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. S. DILEEP

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 868 OF 2006

Dated this the 1st day of February, 2007

JUDGMENT

The appellant is the third accused in Sessions Case No.889 of 2004 on the file of the 1st Additional Sessions Court, Kollam. He faced trial for the offences punishable under Sections 232, 234, 235 and 240 read with Section 120 B I.P.C.

2. The prosecution case against the appellant was that he along with accused Nos. 1,2 and 4 were found engaged in the manufacture of counterfeit coins of Indian five rupee coins. It is the further case of the prosecution that on getting information PW.4, the Sub Inspector of Police, Ezhukone Police Station and PW.3 went to the scene of occurrence on 3.7.2000 at about 12.30 p.m. and found accused No.1 in possession of 270 fake Indian five rupee coins. It is the further case of the prosecution that accused Nos. 2 to 4 had given the instruments to accused No. 1 for manufacturing the counterfeit coins. To prove the case against the appellant and the other accused, the prosecution examined PWs.1 to 6 and

produced Exts.P1 to P8 and Mos.1 to 10. On closing the prosecution evidence, the appellant and the other accused were questioned under Section 313 Cr.P.C. and they denied their involvement in the commission of the offence. Accused No.1 stated that he was an ex-service man and that he was not involved in any case. According to him, he was arrested while he was coming to his wife's house at Vakkanadu. Accused No.3 stated that he was not arrested from Keralapuram as alleged by the prosecution. According to him, he was admitted in the E.S.I. Hospital, Cheeramkavu and that when he came out of the hospital to have tea, he was arrested by the police. Before the trial started, accused No.2 was reported dead. Accused No.4 was absconding and the case against him was split up. However, the trial court, relying on the evidence adduced by the prosecution, found accused No.1 guilty under Sections 232, 234 and 235 I.P.C., convicted him thereunder and sentenced him to undergo rigorous imprisonment for various periods under each section. He was also sentenced to pay fine for each of the offence. The appellant was found guilty for the offence punishable under Sections 234 and 235 I.P.C., he was convicted thereunder and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/- and in default of payment of fine, to undergo simple imprisonment for one year under Section 235 I.P.C. He was also sentenced to undergo rigorous

imprisonment for a period of three years and to pay a fine of Rs.2500/- and in default of payment of fine, to undergo simple imprisonment for a period of six months under Section 234 I.P.C. The sentences were ordered to run concurrently. Set off was also allowed. The appellant and the first accused were found not guilty under Sections 240 and 120 B I.P.C. and were acquitted of those charges. The above conviction and sentence are challenged by the appellant - third accused.

3. This appeal is filed through the jail authorities and the appellant is defended by a State Brief. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel for the appellant has raised three contentions:(i) the trial court committed serious error in relying on the evidence of the official witnesses to find the appellant guilty of the offences alleged against him as the independent witnesses who were examined did not support the prosecution case, (ii) the trial court went wrong in accepting the prosecution evidence as the entire evidence was tainted and there was delay in producing the material objects before the court and (iii) the sentence awarded is excessive.

5. The offence was detected at the instance of PW.4, the Sub Inspector of Police, Ezhukone. He stated that on getting information regarding manufacture of fake coins, he along with PW.3 and other police officials reached the place of occurrence and found accused No.1 engaged in the manufacture of Indian five rupee coins. PW.4 stated that he arrested accused No.1 in the presence of independent witnesses and prepared Ext.P1 search list for seizure of the material objects found in the possession of accused No.1. He further stated that the material objects seized were MO.1 series of fake coins, 270 in number, MOs.2 and 3 eliminator and adapter, MOs.4 and 5 burners, MOs.6, 8 and 9 moulds and MO.7 series of chemicals. This witness also stated that he got information that accused Nos. 2 to 4 were at Keralapuram and that on reaching the place accused Nos.2 to 4 were found standing in a waiting shed near Keralapuram junction. He further stated that on seeing the police party accused No.4 escaped and accused Nos. 2 and 3 were arrested. PW.4 also stated that on conducting a search, accused No.3 was found in possession of MO.10 mould which was seized as per Ext.P2 mahazar. This witness also stated that the counterfeit coins and the material objects were forwarded for chemical analysis and Ext.P8 is the assay report.

6. PW.3 who had accompanied PW.4 supported the version given

by PW.4. Further investigation was conducted by PWs. 5 and 6. PW.5 proved Ext.P8. Though the independent witnesses, PWs.1 and 2, turned hostile to the prosecution, PW.1 admitted his signature in Ext.P1 search list. The trial court found that Ext.P2 mahazar was signed by PW.2. The trial court thus concluded that PWs.1 and 2 were present at the place of occurrence during the detection of the crime. Ext.P8 shows that the coins seized from accused No.1 were counterfeit coins. Ext.P8 also shows the percentage of each chemical used for preparation of MO.1 series of coins.

7. It is to be noted that both PWs.1 and 2 were present at the scene of occurrence. The official witnesses also stated that they found the appellant and the other accused engaged in the manufacture of counterfeit coins. In the above circumstances, the trial court was justified in accepting the evidence of the official witnesses. Further, the short delay occurred in producing the material objects before the court did not cause any prejudice to the appellant at all.

8. On an overall appreciation of the entire evidence, this Court is of the view that the findings entered by the trial court require no interference. The contention of the learned counsel for the petitioner that the sentence awarded by the trial court is excessive cannot be accepted. Considering

the nature of the offence committed by the appellant, this Court is of the view that the sentence awarded is not excessive and the trial court was justified in awarding the said sentence.

The Crl. Appeal is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.APPEAL NO.868/2006

JUDGMENT

1ST FEBRUARY, 2006.